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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 TROY A. GARCIA,

8 Plaintiff,

9 v.

10 SPECIALIZED LOAN SERVICING LLC;  
11 AMERICAN HONDA FINANCE CORP.;  
12 TOYOTA FINANCIAL SERVICES; WELLS  
13 FARGO CARD SERVICES; EQUIFAX  
14 INFORMATION SERVICES, LLC,

15 Defendants

Case No. 2:17-cv-01721-RFB-VCF

**ORDER**

16 **I. INTRODUCTION**

17 Before the Court is Defendant Specialized Loan Servicing, LLC's Motion for Summary  
18 Judgment (ECF No. 35) and Plaintiff Troy A. Garcia's Motion for Partial Summary Judgment ECF  
19 No. 37). For the reasons stated below, Defendant's motion is granted in part and denied in part,  
20 and Plaintiff's motion is denied.

21 **II. PROCEDURAL BACKGROUND**

22 On June 21, 2017, Plaintiff filed a Complaint with Jury Demand against Specialized Loan  
23 Servicing, LLC, American Honda Finance Corp., Toyota Financial Services, Wells Fargo Card  
24 Services, and Equifax Information Services, LLC, alleging violations of the Fair Credit Reporting  
25 Act, 15 U.S.C. § 1681 *et seq.* ("FCRA"). ECF No. 1.

26 American Honda Finance filed its Answer on September 5, 2017. ECF No. 9. Specialized  
27 Loan Servicing filed a Motion to Dismiss on September 19, 2017. ECF No. 16. Wells Fargo Card  
28 Services filed its Answer on September 22, 2017. ECF No. 18.

1 The Court issued a Scheduling Order on October 6, 2017. ECF No. 21. Discovery closed  
2 on March 5, 2018. Id.

3 On December 18, 2017, the Court granted a stipulation to dismiss American Honda Finance  
4 with prejudice. ECF No. 28. On February 8, 2018, the Court granted a stipulation to dismiss  
5 Wells Fargo Card Services with prejudice. ECF No. 30.

6 On May 14, 2018, Specialized Loan Servicing filed the instant Motion for Summary  
7 Judgment, ECF No. 35, and Plaintiff filed the instant Motion for Partial Summary Judgment, ECF  
8 No. 37.

9 On June 7, 2018, the Court granted a stipulation to dismiss Equifax Information Services  
10 with prejudice. ECF No. 51.

11 On September 21, 2018, the Court held a hearing on the pending motions. ECF No. 66.  
12 The Court denied the Motion to Dismiss for the reasons stated on the record. Id. The Court took  
13 the instant motions under consideration. Id.

### 14 15 **III. UNDISPUTED FACTS**

16 The Court finds the following facts to be undisputed.

17 Plaintiff resides in Clark County, Nevada. On May 26, 2011, Plaintiff filed for Chapter 13  
18 bankruptcy in the United States Bankruptcy Court for the District of Nevada. On May 11, 2016,  
19 the Bankruptcy Court confirmed Plaintiff's plan. Plaintiff made all payments required under the  
20 terms of the plan, and the debts to each Defendant were discharged through the Bankruptcy on  
21 August 1, 2016.

22 In an Equifax credit report dated September 13, 2016, Specialized Loan Servicing  
23 inaccurately reported that Plaintiff owed an outstanding balance of \$74,643 and that Plaintiff was  
24 past due in the amount of \$7,373. Specialized Loan Servicing also reported an account status of  
25 "charge-off" and a balloon payment amount of \$53,419. Plaintiff had surrendered the property  
26 associated with this debt and performed all obligations owed to Specialized Loan Servicing after  
27 filing the Chapter 13 bankruptcy.

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1 On October 18, 2016, Plaintiff disputed Specialized Loan Servicing's reported information  
2 by notifying Equifax, in writing, of the inaccurate credit information and requesting that it be  
3 removed, corrected, or deleted. On or about November 3, 2016, Plaintiff received notification  
4 from Equifax that Specialized Loan Servicing and Equifax received notice of Plaintiff's dispute.

5 Following Plaintiff's notification, Specialized Loan Servicing updated its reporting to  
6 correctly report an outstanding balance of \$0 and a past-due balance of \$0. However, Specialized  
7 Loan Servicing and Equifax continued to report an account status of "charge-off" and a balloon  
8 payment amount of \$53,419.

#### 9 10 **IV. DISPUTED FACTS**

11 Plaintiff and Specialized Loan Servicing dispute whether Specialized Loan Servicing  
12 conducted a reasonable investigation and whether the continued reporting of the \$53,419 balloon  
13 payment was inaccurate or misleading. The parties additionally dispute whether Plaintiff suffered  
14 actual damages traceable to the alleged unreasonable investigation or inaccurate reporting.

#### 15 16 **V. LEGAL STANDARDS**

##### 17 **A. Motion for Summary Judgment**

18 Summary judgment is appropriate when the pleadings, depositions, answers to  
19 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no  
20 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."  
21 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering  
22 the propriety of summary judgment, the court views all facts and draws all inferences in the light  
23 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.  
24 2014).

25 If the movant has carried its burden, the non-moving party "must do more than simply  
26 show that there is some metaphysical doubt as to the material facts . . . . Where the record taken  
27 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
28

1 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (quotation marks  
2 omitted).

### 3 **B. The Fair Credit Reporting Act**

4 “Congress enacted the Fair Credit Reporting Act (‘FCRA’), 15 U.S.C. §§ 1681–1681x, in  
5 1970 ‘to ensure fair and accurate credit reporting, promote efficiency in the banking system, and  
6 protect consumer privacy.’” Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th  
7 Cir. 2009) (quoting Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47 (2007)). “As an important means  
8 to this end, the Act sought to make ‘consumer reporting agencies exercise their grave  
9 responsibilities [in assembling and evaluating consumers’ credit, and disseminating information  
10 about consumers’ credit] with fairness, impartiality, and a respect for the consumer’s right to  
11 privacy.’” Id. (alteration in original) (quoting 15 U.S.C. § 1681(a)(4)).

12 “The FCRA expressly creates a private right of action for willful or negligent  
13 noncompliance with its requirements. . . . However, § 1681s–2 limits this private right of action to  
14 claims arising under subsection (b), the duties triggered upon notice of a dispute from a CRA.” Id.  
15 at 1154 (citations omitted); see also Nelson v. Chase Manhattan Mortg. Corp., 282 F.3d 1057,  
16 1059–60 (9th Cir. 2002) (“That with these words Congress created a private right of action for  
17 consumers cannot be doubted. That right is to sue for violation of any requirement ‘imposed with  
18 respect to any consumer.’”).

19 15 U.S.C. § 1681s–2(b) provides for the duties of furnishers of information upon notice of  
20 a dispute. 15 U.S.C. §§ 1681s–2(b) provides in relevant part:

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- 22 (1) In general. After receiving notice pursuant to section 611(a)(2) [15 USCS  
23 § 1681i(a)(2)] of a dispute with regard to the completeness or accuracy of any  
24 information provided by a person to a consumer reporting agency, the person shall
- 25 (A) conduct an investigation with respect to the disputed information;
  - 26 (B) review all relevant information provided by the consumer reporting  
27 agency pursuant to section 611(a)(2) [15 USCS § 1681i(a)(2)];
  - 28 (C) report the results of the investigation to the consumer reporting agency;
  - (D) if the investigation finds that the information is incomplete or  
inaccurate, report those results to all other consumer reporting agencies to  
which the person furnished the information and that compile and maintain  
files on consumers on a nationwide basis; and
  - (E) if an item of information disputed by a consumer is found to be

1 inaccurate or incomplete or cannot be verified after any reinvestigation  
2 under paragraph (1), for purposes of reporting to a consumer reporting  
3 agency only, as appropriate, based on the results of the reinvestigation  
promptly—

- 4 (i) modify that item of information;
- 5 (ii) delete that item of information; or
- 6 (iii) permanently block the reporting of that item of information.

7 A furnisher may be held liable for violation 15 U.S.C. § 1681s-2(b)(1) if it fails to conduct  
8 a reasonable investigation after being notified by a CRA of a consumer's dispute. Gorman, 584  
9 F.3d at 1157. The question of whether an investigation was reasonable is typically left to the jury  
10 – however, summary judgment of the reasonableness issue is appropriate to grant “when only one  
11 conclusion about the conduct's reasonableness is possible.” Id. (citation and quotation marks  
12 omitted). A furnisher may also be held liable if it conducts a reasonable investigation but  
13 subsequently declines to “rectify past misreporting and prevent future misreporting of  
14 information.” Drew v. Equifax Info. Servs., LLC, 690 F.3d 1100, 1108 (9th Cir. 2012).

15 The FCRA provides for actual damages, punitive damages, and attorney's fees for willful  
16 violations of its statutory requirements. 15 U.S.C. § 1681n(a). If a plaintiff establishes a negligent  
17 violation of the statute, the FCRA provides for actual damages and attorney's fees. 15 U.S.C.  
18 § 1681o(a). “The term ‘actual damages’ has been interpreted to include recovery for emotional  
19 distress and humiliation. . . . [N]o case has held that a denial of credit is a prerequisite to recovery  
20 under the FCRA.” Guimond v. Trans Union Credit Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995)  
21 (citations omitted). “A plaintiff who alleges a ‘bare procedural violation’ of the FCRA, ‘divorced  
22 from any concrete harm,’ fails to satisfy Article III's injury-in-fact requirement.” Syed v. M-I,  
23 LLC, 853 F.3d 492, 499 (9th Cir. 2017), cert. denied, 138 S. Ct. 447 (2017) (quoting Spokeo, Inc.  
24 v. Robins, 136 S. Ct. 1540, 1549 (2016)).

## 25 VI. DISCUSSION

### 26 A. Accuracy of Balloon Payment Reporting

27 In its motion for Summary Judgment, Specialized Loan Servicing argues that it was not  
28 inaccurate to report the balloon amount as a historical term of the debt. In its cross-motion,

1 Plaintiff argues that the report inaccurately states that Plaintiff continued to owe \$53,419 on an  
2 account that he had properly discharged in his bankruptcy.

3 The Court finds a genuine dispute as to the accuracy of the balloon amount as reported.  
4 “[A]n item on a credit report can be incomplete or inaccurate ... because it is patently incorrect, or  
5 because it is misleading in such a way and to such an extent that it can be expected to adversely  
6 affect credit decisions.” Drew, 690 F.3d at 1108 (alterations in original) (citation and quotation  
7 marks omitted). The Court finds that it is not clear from the record whether the continued report  
8 of the balloon payment would be misleading to a furnisher of credit. While it is possible to find  
9 that historical information is not misleading to a furnisher of credit when the balance amount is  
10 \$0, it is also possible to find that the “charge-off” notation suggested that the \$53,419 was a  
11 presently-collectable balance and that the \$0 balance amount at best confuses the report rather than  
12 clarifies it. Because a reasonable jury may or may not find that the balloon payment and “charge-  
13 off” notation were incorrect or sufficiently misleading, the Court reserves this question for the  
14 jury.

### 15 **B. Reasonableness of Investigation**

16 In its motion for Summary Judgment, Specialized Loan Servicing argues that no evidence  
17 supports Plaintiff’s contention that it failed to conduct a reasonable investigation. In its cross-  
18 motion, Plaintiff argues that Specialized Loan Servicing performed a willfully or negligently  
19 inadequate investigation as a matter of law by failing to review all of the information he disputed.

20 It is undisputed that Specialized Loan Servicing investigated and modified the balance and  
21 past-due balance, but not the balloon payment amount, following Plaintiff’s notification.  
22 Specialized Loan Servicing argues that even if it erred in its response, it conducted a reasonable  
23 investigation as a matter of law. Plaintiff responds with evidence that Specialized Loan Servicing  
24 violates its own policy by declining to investigate further as long as the account status is accurate.  
25 Specialized Loan Servicing contends that Plaintiff fails to show that it deviated from investigatory  
26 policies in Plaintiff’s particular case.

27 Plaintiff acknowledges that Specialized Loan Servicing investigated the balloon amount.  
28 The factual dispute in this case is the reasonableness of Specialized Loan Servicing’s decision to

1 continue reporting the balloon amount in light of its investigatory findings. The Court finds that  
2 Plaintiff identifies no failure to investigate that affected the information reported. A more  
3 exhaustive search would not have resulted in a different report, as Specialized Loan Servicing was  
4 aware that the balloon amount was historical information and nevertheless continued to report it.  
5 Moreover, even assuming arguendo that the investigation was lacking as a factual matter, no harm  
6 to Plaintiff resulted. Therefore, the Court finds that Plaintiff's FCRA claim may only proceed as  
7 to Plaintiff's inaccurate reporting theory pursuant to § 1681s-2(b)(1)(D) & (E).

### 8 **C. Damages**

9 Specialized Loan Servicing argues that Plaintiff has failed to demonstrate any cognizable  
10 injury fairly traceable to Specialized Loan Servicing's conduct. Plaintiff responds that he incurred  
11 lost time at work, stress and frustration, fear of credit denials, and transportation costs, as supported  
12 by deposition testimony. Plaintiff also argues that he is entitled to punitive damages because  
13 Specialized Loan Servicing's conduct was willful.

14 The Court finds that Plaintiff could establish actual damages. It is uncontested that Plaintiff  
15 did not suffer a denial of credit as a result of Specialized Loan Servicing's reporting, but Plaintiff  
16 testified to stress suffered as a result of the allegedly inaccurate credit report, which constitutes  
17 sufficient harm under the law. Guimond, 45 F.3d at 1333 (9th Cir. 1995). The Court also finds  
18 that Plaintiff could establish punitive damages if the jury determines that Specialized Loan  
19 Servicing willfully violated the FCRA. Such a willful violation could be inferred from Specialized  
20 Loan Servicing's knowledge that the balloon amount was historical information and its continued  
21 reporting of the \$53,419 debt. The Court leaves the determination of damages to the jury.

22 For the reasons noted above as to the genuine issues of disputed fact between the parties,  
23 the Court does not find that Plaintiff has established any of his claims as a matter of law upon  
24 undisputed facts.

## 25 **VII. CONCLUSION**

26 Accordingly,

27 **IT IS ORDERED** that Specialized Loan Servicing's Motion for Summary Judgment (ECF  
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1 No. 35) is DENIED in part and GRANTED in part.

2 **IT IS FURTHER ORDERED** that Troy Garcia's Motion for Partial Summary Judgment  
3 (ECF No. 37) is DENIED.

4 **IT IS FURTHER ORDERED** that the parties are directed to submit a Joint Pretrial Order  
5 by April 24, 2019.

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7 DATED: March 20, 2019.

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**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**